

*at the time of paying over the proceeds of sale to the creditor. This is done from necessity, and as an unavoidable consequence of the peculiar nature of the case. 2 *Inst.* 471; *Gladwyn v. Hitchman*, 2 *Vern.* 135; *Stanhope v. Mannors*, 2 *Eden*, 197; *Ex parte Fisher*, 3 *Mad.* 160; *Brinkerhoff v. Thalhimer*, 2 *John. C. C.* 486; *Marshall v. Thompson*, 2 *Mun.* 412; *Campbell v. Macomb*, 4 *John. C. C.* 534; *Leveridge v. Forty*, 1 *Mau. & Sel.* 706; *Coates v. Hewit*, 1 *Wils.* 80; *Bonafous v. Rybot*, 3 *Burr.* 1370; *Judd v. Erans*, 6 *T. R.* 399; *Bac. Abr. tit. Debt, B*; *Ridgely v. Lee*, 3 *H. & McH.* 94; *Sparks v. Garriques*, 1 *Bin.* 152.

It is also well established, that if the mortgagor, who holds the possession, commits waste; or, in any manner attempts to diminish the value of the property; or, where it consists of the personalty, is about to remove it beyond the reach of his creditor, so as to render it unequal to the discharge of the debt, or to place it so as not to be forthcoming for the satisfaction of the debt, he may be restrained by injunction. And an injunction for such a purpose may be obtained at any time before the debt becomes due; for, otherwise, a fraudulent mortgagor might, at his pleasure, deprive the creditor of all benefit from his mortgage. Upon this ground this injunction was granted and now reposes. *Eden Inj.* 119.

It is clear, that this mortgage could not have been foreclosed at the time the bill was filed; because the credit given had not then expired; and, therefore, Salmon could not then have asked for more than he has prayed for; that is, to have the property placed under the protection of an injunction from this Court. And relief cannot now be extended to him beyond that of perpetuating the injunction heretofore granted. In a case situated like this, the plaintiff before the debt became due, filed a bill praying for a sale and an injunction to stay waste. The injunction was granted; and, on the coming in of the answer, was, on a motion to dissolve, continued to the final hearing. After the mortgage debt became due the mortgagee filed another bill praying for a sale. To which it was objected by the defendant in his answer, that there was another suit then depending embracing the same subject. But I considered the first as a mere injunction bill, on which there could have been no decree for a sale, and as not, at all, inconsistent with the second bill on which I decreed a sale accordingly. *Murdock's Case*, 2 *Bland*, 461.

It was indispensably necessary, in this case, that the plaintiff should establish his title as he has done; and also shew, that there was some debt unsatisfied; for, if the mortgage had been found *defective, or insufficient in its origin; or had been nullified by the fraud, or any improper act of the plaintiff; or had been fully satisfied, the plaintiff could not have had any foundation on which to call for the preservation and protection of property which never had been, or had ceased to be thus legally pledged for his benefit.